

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 17, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: Sen. Jerry O'Neil (R)

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 176, SB 467, SB 384, SB 476
SB 417, SB 477, SB 417, SB 452

EXECUTIVE ACTION ON SB 176

Discussion:

SEN. WALT MCNUTT handed out amendments **EXHIBIT(jus40a01)**. He said they had finished the subcommittee and made some modifications to the bill.

Valencia Lane, Legislative Staff, explained the amendments and how they were changed to make more clear. She said the subcommittee looked at various points of the bill and incorporated items from testimonies given during the hearing.

SEN. MIKE HALLIGAN said the subcommittee did all they could do to clean this bill up and change language in the amendments. **SEN. MCNUTT** added some judges are uncomfortable with this bill and some will like it. He felt the subcommittee addressed all of the concerns that were brought up.

Motion: **SEN. MCNUTT** moved **SB 176 AMENDMENTS BE ADOPTED.**

Discussion:

SEN. DUANE GRIMES wondered if paragraph five could be segregated out of the amendment. He didn't think it was necessary and felt there were no implications for this paragraph. **John Andrew, Department Labor and Industry,** said currently there is no one for bargaining agreements, but if this bill was to pass then some individuals would be prepared for this area.

SEN. RIC HOLDEN asked if any district judges came to the subcommittee to testify on the issues. **SEN. MCNUTT** said no.

Vote: Motion carried unanimously.

Motion: **SEN. MCNUTT** moved **SB 176 DO PASS AS AMENDED.**

Discussion:

CHAIRMAN GROSFIELD asked about the concept of getting this bill to the house and he wondered where HB 124 was in its process and if it was likely to be moved to the Senate. **Judy Paynter, Department of Revenue,** said HB 124 is now in a select committee and explained when the hearings were held. She said they will have to take into account the welfare of the courts after the transmittal break.

SEN. HOLDEN asked why was this bill brought forward and what is the major point of centralizing the district court system in Helena. **SEN. MCNUTT** explained this bill was the result of an interim committee and tried to establish a state district court, which has been worked on since 1977. He talked about the different sources of funding that goes into these systems.

SEN. HOLDEN asked if this process was to go through would taxpayers in the state be looking at increased costs. **SEN. MCNUTT** said no, because through this process all of the counties had been researched with expenses and they established a funding mechanism for them. He said they worked on all of the counties budgets and what would be expected on a future basis.

SEN. HOLDEN asked if costs increased due to moving the system to Helena since the distance from all of the districts is far. **SEN. MCNUTT** said people in rural areas are supporting this bill because there was disparity in courts across the state.

{Tape 1; Side B}

SEN. HOLDEN asked about a bill that regarded pay increases. **SEN. HALLIGAN** said he was not carrying that bill, but **SEN. BOHLINGER** was. He is working on a bill dealing with retirement age of judges.

SEN. HOLDEN asked how the courts get brought up to the level without increase taxes. **SEN. HALLIGAN** said it doesn't and if additional funding is needed to allow uniformity in the district courts, the next session would deal with this issue.

SEN. HOLDEN didn't think this bill should pass taking away local control of the system that is currently in place.

CHAIRMAN GROSFIELD asked how the discussion has been from the local level regarding the control that will no longer be in these rural areas. **Judy Paynter** explained the differences in the current court system. She said by allowing the judicial system to look at situations and find a way to allocate resources within their own system, may add a risk and they would have to ask the next session for modifications in the budget.

SEN. MCNUTT showed the diagram of the district court system and explained how this bill would help the system.

Vote: Motion carried 8-1 with **SEN. HOLDEN** voting no.

EXECUTIVE ACTION ON SB 467

Motion: **SEN. GRIMES** moved SB 467 DO PASS.

Discussion:

SEN. STEVE DOHERTY felt this bill needed to have language cleaned up. **SEN. GRIMES** said this bill could be used by the trial lawyers in a significant and in an unintended way. He added all employees within the train system may bring actions in the state and there could be pressure built up in the court system. He felt this bill did not change any policy.

SEN. HOLDEN explained the provisions in this bill and mentioned collective bargaining agreements and asked why would someone want to get out of a collective bargaining agreement instead of standing by it. **SEN. DOHERTY** pointed out railroads were supported by local council and while the negotiations of collective bargaining agreements were taking place they knew about this law.

SEN. HOLDEN said his question was if these employees stood by the collective bargaining agreements and if there was a grievance contesting negligence, mismanagement or misconduct then those issues need to be decided under the collective bargaining agreement.

SEN. HALLIGAN didn't understand the specific terms regarding the collective bargaining process. He asked if an employee was wrongfully discharged or injured would that be covered under usual collective bargaining processes. **Pat Keim, Director of Affairs, Burlington Northern Railroad**, explained the collective bargaining agreement and said discharge procedures are a part of the disciplinary process. He mentioned the Railroad Act and explained the law and how it affects the labor union process.

SEN. HALLIGAN asked about understanding the issue of duplication and how more than one process would work. **Don Judge, Director, AFLCIO**, said under federal law an employee can elect to not be a union member, they can elect to pay a smaller portion of their dues to be covered under the provisions of a collective bargaining agreement, but they don't want association with the union. He said in these types of instances these employees may not want to use the collective bargaining agreement to deal with grievances. The current law provides these employees an access to addressing the problems without having to go through a grievance officer. If the bill is passed then these employees will have to go through the course of a grievance officer.

SEN. HALLIGAN said this committee has to deal with the duplication of this bill.

SEN. DOHERTY asked what issues could they take to federal court with and get appealed, if the decision was wrong or if it was arbitrary. **SEN. HALLIGAN** said it could be the arbitrary issues. **Al Smith, Montana Trial Lawyers Assoc.**, said the record is made, with the facts, during the first investigative hearing and then it is reviewed at the next step of appeals and it is an administrative decision whether the decision was correct.

{Tape 2; Side A}

SEN. DOHERTY asked how extensive the federal court would be. **Leo Berry, Attorney, Helena**, said he had not participated in any of these types of actions. He said it was his understanding the court would look at all the issues and bring witnesses in and go through the procedure.

SEN. DOHERTY asked what the difference, to the railroad, would be for an entirely new trial in federal court. **Leo Berry** said the difference would be undermined and actions would be allowed to taken outside of the collective bargaining provisions.

SEN. HOLDEN asked if an employee is working for the railroad are they already a part of the railroad collective bargaining agreement. **Pat Keim** explained it is mandatory to join the union, which allows a 45 day period before joining the union.

SEN. HOLDEN pointed out employees may fall through the cracks because they would not have any remedy for their grievances.

CHAIRMAN GROSFIELD asked how this issue would be applied to what is currently on the books dealing with collective bargaining agreements. **Leo Berry** said he didn't know that railroad employees understood the statute existed because they were unaware that an employee could bring a wrongful discharge claim under this particular action.

CHAIRMAN GROSFIELD said if this bill doesn't pass, how would that effect collective bargaining in the future. **Leo Berry** talked with Montana Rail Link attorneys and two more cases for wrongful discharge have been filed under this act. He felt more cases may be filed unless this bill passes and the collective bargaining agreement covers a wide variety of issues.

CHAIRMAN GROSFIELD asked how often cases are renegotiated. **Leo Berry** did not know the expiration date of the current agreement. He said Section 6, in the law, can bring forth negotiations.

CHAIRMAN GROSFIELD asked if the railroad could raise negotiations under this section also. **Leo Berry** answered yes. **Pat Keim** said contracts are renegotiated periodically. He said if there is a specific contract with a clause then the provisions of the contract remain in effect.

{Tape 2; Side B}

CHAIRMAN GROSFIELD asked if this bill would become a major issue with collective bargaining. **Don Judge** suspected it would be an issue with collective bargaining and he added it would be up to the railroad unions to negotiate.

SEN. GRIMES said he would like to include these employees in the language of this bill to provide a remedy. He felt this would force the employees to use their union procedures that are already in place.

SEN. MCNUTT asked how many employees this would impact and how many railroad workers do not belong to the union. **Don Judge** said he didn't have an exact idea of how many. He said there were few employees that refuse to pay to the union.

Al Smith said there are approximately 30 to 50 railroad employees in this state that do not have any collective bargaining agreement.

Leo Berry mentioned the employees who are not part of the collective bargaining agreement would still be protected by the Wrongful Discharge Act.

CHAIRMAN GROSFIELD thought by passing this bill it would allow the labor unions to be in control and have more members. **SEN. GRIMES** agreed and said the net effect of this language would be to make these sections of law apply to wrongful discharge in cases where there is no collective bargaining agreements for railroad workers.

Vote: Motion carried 6-3 with SEN. BISHOP, SEN. DOHERTY and SEN. PEASE voting no.

EXECUTIVE ACTION ON SB 384

Motion: SEN. DOHERTY moved SB 384 BE AMENDED. Amendments were handed out **EXHIBIT(jus40a02)**.

Discussion:

Valencia Lane explained the amendments and said it no longer provides for a criminal trespass provision, but it does provide for a negligent straying and applies to hunting only.

CHAIRMAN GROSFIELD asked what the current fine is for people hunting on private property. **Jeff Barber, Montana Wildlife Federation**, said current law would refer to Title 45, which is \$500 fine and six months in jail with first offense. **Valencia Lane** pointed out Title 45 only applies if a person knowingly went onto the property without permission.

CHAIRMAN GROSFIELD wondered what the fine was for negligently straying onto property. **Valencia Lane** believed the first offense would be the \$25 and after that they would be subject to the \$100 as stated in Subsection 3.

SEN. HALLIGAN said the fines for hunters who stray should be listed under the criminal statutes. **Valencia Lane** said the issue involved is working with hunter permission and this bill would protect people under Title 45 and not brought into a criminal issue.

SEN. HALLIGAN mentioned the issue of unmarked property and if it should be treated in the same way.

SEN. GRIMES said under current law it would be easier to go back to Title 45 unless this bill passed. **Valencia Lane** said this bill didn't address the negligent straying issue.

Vote: Motion carried unanimously.

Motion/Vote: **SEN. MCNUTT** moved **SB 384 DO PASS AS AMENDED**. Motion carried unanimously.

{Tape 3; Side A}

EXECUTIVE ACTION ON SB 476

Motion: **SEN. HALLIGAN** moved **SB 476 DO PASS**.

Discussion:

CHAIRMAN GROSFIELD explained the bill stating the rules and procedures.

Rose Hughes, Montana Healthcare Assoc., felt comfortable with this bill and added the appropriate groups would add input.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 477

Motion: **SEN. HALLIGAN** moved **SB 477 DO PASS**.

Discussion:

CHAIRMAN GROSFIELD asked who decides if someone is able to make decisions. **Rose Hughes** explained statutory language found in the patients' rights statutes.

CHAIRMAN GROSFIELD asked if the resident was unable to make a decision and there wasn't a power of attorney or next of kin available, how can they determine if the resident can or cannot make the decisions. **SEN. HALLIGAN** said they ask the treating physician in these cases.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 417

Motion: SEN. GRIMES moved SB 417 DO PASS.

Discussion:

SEN. GRIMES explained what the bills intentions are, which is allowing the parent or guardian to be notified if a young women is to have an abortion.

CHAIRMAN GROSFIELD felt troubled by the way the bill was phrased. He thought the provision would be unconstitutional. **SEN. GRIMES** said language could be added if needed describing the bypass provision. **Valencia Lane** suggested referencing a bypass provision could be added and explained where in the bill it could be added. She said each statement within an amendment is limited to 25 words as to be careful when adding language.

SEN. GRIMES asked if any difficulties would arise with a language change. **Valencia Lane** answered no.

Substitute Motion: SEN. GRIMES motioned to **AMEND SB 417** adding language. Adding "unless a judge rules notice is not required".

Discussion:

SEN. DOHERTY felt the substitute motion of this amendment would add language that would be statutory language to the constitution.

Withdrawn Motion: SEN. GRIMES withdrew his substitute motion to amend the bill and add language enacting a bypass provision.

{Tape 3; Side B}

SEN. HALLIGAN thought the testimony was conflicting with respect to whether the actual notice to the parents enhances their rights or not.

SEN. DOHERTY felt this bill didn't enhance the rights of youths and he mentioned the CI75 prohibition and how it would go with other provisions of the constitution. He said the rights within the constitution should not be changed in order to pertain to this interest.

SEN. HOLDEN said the right to life is more than notifying the parents when an abortion is going to take place.

SEN. GRIMES summarized the bill by saying it is a protection for the young women involved with this issue and parents' rights are enhanced.

Vote: Motion failed with a tie roll call vote of **4-4** with **SEN. DOHERTY**, **SEN. HALLIGAN**, **SEN. MCNUTT** and **SEN. PEASE** voting no.

EXECUTIVE ACTION ON SB 452

Motion: SEN. DOHERTY moved that **SB 452 BE AMENDED**. Amendments were handed out **EXHIBIT(jus40a03)**.

Discussion:

SEN. DOHERTY explained amendments and Sections 1 and 2 of the bill to be struck out prohibiting the use of pepper spray in correctional facilities.

Motion/Vote: SEN. HOLDEN moved **SB 452 BE TABLED**. **Motion failed** with a roll call vote of **4-4** with **SEN. DOHERTY**, **SEN. HALLIGAN**, **SEN. PEASE** and **CHAIRMAN GROSFIELD** voting no.

Discussion:

SEN. HOLDEN said the department does record the race of the person involved with the altercation of the staff and when pepper spray is being used. He said a fiscal note may need to be generated with this bill also.

SEN. DOHERTY said he didn't want to take away the correctional officers use of pepper spray.

Vote: Motion carried with **SEN. HOLDEN** voting no.

CHAIRMAN GROSFIELD talked about sections of the bill and how he felt that they may be unnecessary.

SEN. HALLIGAN added the Law Justice and Affairs Interim Committee may be able to monitor this issue and work with the Department of Corrections.

{Tape 4; Side A}

CHAIRMAN GROSFIELD mentioned changing language in the bill to help with clarification. **Valencia Lane** asked what sections need to be amended and clarified.

SEN. GERALD PEASE stated the defendants in the correction facilities are little children who don't weigh much and pepper spray is very powerful. He felt there was a definite problem in the Pine Hills Detention Center and suggested a study or appointing an intern to follow up with more information regarding this issue.

SEN. HOLDEN said if this bill passes this committee and ends up in the House there may be the potential of adding the prohibiting use of pepper spray. He felt a study bill would be appropriate.

Motion/Vote: **SEN. MCNUTT** moved **SB 452 BE TABLED. Motion failed** with a roll call vote of **4-4**.

ADJOURNMENT

Adjournment: 12:20 P.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus40aad)